

How Old is 14 Really? On Child Marriage and Case-by-Case Justice

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In 2011, German authorities put a sudden halt to the six-months grace period during which minors could continue to use driving licenses acquired abroad. Until then, kids fortunate enough to [get their hands on foreign driving certificates](#)—mostly during school exchange programs with American high schools in the context of post-war international understanding—catapulted straight to the top of their school's social food chain by exchanging mundane conversations about public transport for the mature hassle of finding parking spaces near school grounds. International Law had found its limits in the health and safety directives of the vehicle registration office, or to use the sexy German word: *Kraftfahrzeugzulassungsbehörde*.

Six years on, the [chancellor's cabinet is determined](#) to invalidate another certificate a comparably small (but steadily growing) number of refugee minors demand legal recognition for: their marriage certificates. A bizarrely archaic hiccup for old-school historicists, curiously ambivalent and legally intriguing to others, child marriages currently enjoy an unforeseen centrality in Germany's public life. On the face of it, the government's proposed marriage bill endeavours to treat foreign marriage certificates of minors with the same suspicion as American driving licenses. But since the proposed marriage bill is targeting Syrian refugee girls, with some Afghans and Iraqis thrown in the mix, most media outlets in a well-choreographed reflex of uniform dissent have accused the government of more sinister motives. Seasoned political journalists, the ones who tirelessly remind their readers how they speak truth to power, were first to point out that with the general elections around the corner, the bill surfaces at an all too convenient time for Angela Merkel. Through a Machiavellian distancing from her open-hearted refugee policies and a muscling against asylum seekers Merkel unashamedly pandered towards the growing right-of-centre vote bank (long viewed the CDU's birth right), an electorate uneasy to identify directly with the scruffy populist alternative, the AfD. Thus, declaring child marriages of refugees null and void the very moment a married couple crosses German borders was nothing more than an empty xenophobic gesture targeting the weakest section of society for populist applause—no different from openly racist minaret or burka bans.

In a thoughtful article published on this site, Sabine Witting explored how such legislative manoeuvres sit awkwardly with International Law and lack a much-needed balanced view of the *Einzelfall*: the individual trials and tribulations a child has experienced, the emotional bond she may have developed to her husband, and the delicate situation of being stranded in a far-away-place without any meaningful social structures and family support. Witting's objections are in kindred spirit with the [OLG Bamberg's 2006 judgement](#) in a case involving a 14-year old Syrian girl married to her 21-year old cousin. The couple was separated upon arrival in Germany, the girls placed under the guardianship of child services, and soon after began took up their legal battle for reunification. Bamberg's OLG ultimately ruled that while marriage at 14 conflicts with the *ordre public*—an exit clause national legal orders can employ to reduce international law's glaring heat just before it is about to burn holes into societies moral fabric—the fall-back legal framework [remained Syrian Law of Personal Statues](#). Here the couple's repeated sexual intercourse had healed any legal deficiencies regarding the age of the girl, and since consensual sex of adults with 14-year olds was not a criminal offence [according to the German Penal Code](#), there were no legal objections to the couple's reunification. This reasoning is *Echt*-German! While Bamberg's ruling will also be remembered for its [bold citations of Wikipedia in key questions concerning Islamic Law](#), it is difficult to read it as anything but a cry for help: the Bundestag should introduce proper regulatory mechanisms, or at least the BGH should speak a final word in this matter.

Enter 2017, and it seems that despite Hegel's progress predictions of constitutionalism's triumphant march from-the-west-to-the-rest, Europe today is hard pressed to look beyond its shores for instructive twenty-first century survival scripts. India's past offers some lessons on child marriages for the current German predicament. As a UNICEF

report found last year, a shocking 35% of girls of 15 years and younger are married. The number rises to 65% if extended to include 18-year olds. These figures fly right in the face of two centuries of liberal constitutional discourse seeking to curb child marriages, where early nineteenth centuries liberals like Ram Mohan Roy had placed age restriction for marriages at right at the heart of India's constitutional agenda. So why had an issue of such burning significance failed to materialise in any meaningful way? Parachuting into early parliamentary discourses of the twentieth century presents us with the following picture.

In July 1927, when the Indian Legislative Assembly had swapped the humidity of Delhi's Vidhan Sabha for a cooling stint in a Kashmiri hill station, Har Bilas Sarda, a classic liberal in many respects, proposed that some age restriction should be placed on Hindu child marriages. Yet, Sarda himself had little hope that his bill would pass. For one thing, his proposal had repeatedly failed to gather traction (or even be heard) in the preceding decades, with Indian neo-conservatives immediately on the fence of what smelled like an intervention into native religious practices. After some half-hearted attempts to push through legislation that would raise the age limit for marriages to 14 in the late nineteenth century, the British had largely withdrawn to an awkward trade-off to practice non-interference into private 'religious household matters' of native Indians in return for political docility.

But Sarda came laden with a whole set of fresh arguments and statistics. With a tenth of Indian girls married off before the age of eight, he attacked his colleagues, Indians were not only jeopardising the physical well-being of these girls, but in the new global race for civilizational supremacy risked serious evolutionary disadvantage that may well lead to the extension of the Hindu race. If it was not for child marriages India had long acquired independence, either because there was no historical waiting room in which Indians could be locked away in perpetual tutelage to overcome their cultural shortcomings, or because the sheer physical strength of men born from adult women would frighten the British enough to pack up their things and leave. Fully equipped with the latest Orientalist tropes, Sarda went on to bemoan that 'even China has passed a law forbidding marriages of girls below sixteen and boys below eighteen', and now only Indians were left carrying the extinguishable flame of barbarism.

While Sarda insisted that even the sacred Hindu code of 'Manu', from which a number of neo-conservative politicians derived their political philosophy, would allow the marriage of girls three years after they had reached puberty, and even then just in exceptional circumstances, the general sentiments in the assembly could not warm up to his idealist zeal. Partly due to the fact that religion had emerged as a space of imperial resistance, in which the selective blindness of the colonial gaze allowed Indian radicals to smuggle subversive political messages freely into the religious grammar. But partly because behind the thick veneer of respectability and civility, the domineering disciples of Ram Mohan Roy viewed unmarried girls who stayed with their parents after the menstruation cycle began as a curse for the Hindu community at large. This led many celebrated educators—think only of the revered [Bengali Nobel prize winning poet Rabindranath Tagore](#)—to take leading roles in turning their daughters into child-brides.

It was widely held that unmarried women would swamp Indian cities, and with no strong patriarchal hand putting them in their place, ultimately indulge in prostitution, illicit sex, and crime. Much of the problem for Indians in their quest to recover liberties, was not so much child marriages per se, which bounded women in servitude to their husbands, but the moment this bond dissolved; that is, when the end of the contractual relationship resulted in widowhood with the husband's death. An odd fetishism that regarded the dissolution of existing contracts as a greater evil than their content. The dress rehearsal for this debate had long been in the making with nineteenth century anti-abolitionists objections, that the decisive reasons for slavery's continuance—despite its brutally extractive and dehumanising character—lay in the apparent social fact that any sudden dissolution of the contractual relationship between the slave and the master would throw the political community as such into anarchic chaos.

In India, few cases were brought to court after the Sarda Act's reluctant ratification in 1929. This was mainly because the neo-conservatives wing had managed to cut the law to size. In its [final form the bill did not interfere in existing child marriages](#). And even if child marriages had been consummated after the passing of the bill, a

balanced view demanded that the opinion of the girl had to be taken into account before the marriage could be dissolved. Under no circumstance should married minors be ripped out from their delicate social bonds, however fraught these were with legal stigma. After all, neo-conservative liberals claimed that sexual intercourse below the age of 15 was regarded as statutory rape since 1871, so young girls had sufficient legal protection against their husbands. [But while hospitals remained filled with child-brides giving births at ever younger ages](#), and frequently dying in the process, only whispers reached the colonial courts.

Roughly 80 years later, India's Lok Sabha [tackled the issue of child marriages](#) anew. A sober view had forced them to acknowledge that the legal medicine to cure India's society from child-marriages—with nuanced approaches to do justice to the complexity of the problem and take into account the child's view—had only intensified the disease. A complete ban of child-marriages, no different from a complete ban of slavery, certainly comes with its own inherent set of injustices and violence, both ontological and real, but seems an opportune path if we—the proverbial democratic 'we'—are wary not to enter the unsavoury debate so masterfully parodied in Dave Chappelle's classic 2004 stand-up routine *For What It's Worth* to process R. Kelly's piss-tape scandal: [How old is 14 really?](#)

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